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Dear Mr. La Spina,

Thank you for the opportunity to provide comments on the Department of Ecology's preliminary draft of its Industrial Stormwater General Permit. Puget Soundkeeper Alliance appreciates the ability to participate in the External Advisory Committee, and makes the following comments on the preliminary draft.

General Comments

1. PSA is disappointed that Ecology has not taken the opportunity to establish numeric effluent limitations in this permit, given the substantial data generated during the 2002 permit as well as reliable scientific research demonstrating the magnitude of the stormwater problem in Puget Sound and the catastrophic effect that certain stormwater constituents, including copper, have on threatened and endangered salmonids. The draft fact sheet explains Ecology's decision only by stating that "BMPs are often effective in preventing water quality violations" and that "water quality-based effluent limitations are often unnecessary." Draft FS, p.28. PSA has serious concerns about this approach.

   First, PSA believes Ecology's experience with the 2002 permit demonstrates that BMPs are not, in fact, effective in preventing water quality violations. Even if they were, Ecology inspections reveal that full compliance with permit BMP requirements is rare. See Draft FS at p.22 ("no more than 25% would be considered in full compliance"). A permit that includes enforceable, water quality-based effluent limitations would provide the proper incentive for facilities to come into 100% compliance and greatly reduce the likelihood of water quality violations.

   Second, benchmarks, measured at the point of discharge, simply cannot assure compliance with water quality standards in the receiving waters. Research conducted by the Northwest Fisheries Science Center has documented a 90% pre-spawn mortality for coho salmon returning to urban streams largely comprised of stormwater run-off.[1] PSA believes this and other research clearly demonstrates that the benchmarks and BMPs approach to stormwater regulation is not effective in achieving water quality standards.

[1] See http://www.nwfsc.noaa.gov/research/divisions/ec/ecotox/fishneurobiology/acutedieoffs.cfm.

Finally, even if benchmarks were sufficient to ensure compliance with water quality standards, PSA is troubled by the draft's failure to state that permittees are actually required to attain benchmarks.

Question 1.1: How does Ecology justify its decision not to impose any numeric effluent limitations in this permit?

Question 1.2: In the absence of a reasonable potential analysis, what is the basis for Ecology's conclusion that compliance with benchmarks will ensure compliance with water quality standards?

2. Although PSA would strongly prefer a permit that included effluent limitations, we appreciate the permit's more hands-on approach, which appears to ensure that Ecology staff will devote some individual attention to permittees that is lacking in the current permit. We hope this approach will resolve serious problems we have observed with the implementation of current permit.

   For example, we have discovered numerous facilities that have utterly failed to submit DMRs, maintain an adequate, updated SWPPP, or conduct the requisite Level 1 and Level 2 responses. In fact, the draft fact sheet confirms this observation by stating that Ecology inspections reveal that only about half the covered facilities had SWPPPs and even fewer had SWPPPs that were kept up to date and fully implemented. Draft FS, p. 22. Ecology also points out that "no more than 25% would be considered in full compliance with permit BMP requirements." Clearly, effective enforcement must be a higher priority to achieve compliance with water quality standards.

   We have also discovered many facilities that routinely discharge extremely high concentrations of certain parameters, making their coverage in a general permit inappropriate. Galvanizers, for example, frequently discharge zinc at levels more than 1,000 times the existing benchmark! Again, this is not news to Ecology. The draft fact sheet points out that "at least 10% to 15% of the permitted facilities have a stormwater discharge that is likely to be causing a measurable environmental problem." Draft FS, p.22. PSA believes that in these cases, permittees should be required to obtain individual permits with enforceable effluent limitations.

   Furthermore, we continue to discover industries that are discharging stormwater without ISGP coverage. PSA has sought to bring dozens of these facilities into the permit process, yet we suspect there are hundreds or thousands more who are unaware of the permit or unwilling to comply with its terms. Ecology is also aware of this problem, noting in the Draft fact sheet that only 400 of 17,000 facilities in the state that qualify as light industry based on SIC have coverage under the existing permit, yet "many of these likely discharge to surface water or a stormwater system that discharges to surface water." Draft FS at p.31.

   Question 2.1: How will Ecology effectively enforce the terms of this permit, including those pertaining to timely submission of DMRs, maintaining adequate and up-to-date SWPPPs, and conducting the requisite leveled responses? Will Ecology be able to devote sufficient resources to permit enforcement?

Question 2.2: Given the data that exists from the current permit, which demonstrates extremely high concentrations of pollutants from certain permittees or categories of permittees, why doesn't Ecology just remove these top polluters from the general permit and require individual coverage with effluent limitations?

Question 2.3: How will Ecology ensure that all facilities requiring ISGP coverage (a) are informed of this obligation, and (b) compelled to apply for coverage?

3. PSA is concerned that the permit does not adequately anticipate the upcoming PCHB ruling on the Boatyard General Permit appeals. This ruling may invalidate the Boatyard permit because, among other reasons, Ecology failed to perform a reasonable potential analysis before opting for benchmarks in lieu of numeric effluent limitations. As with the Boatyard permit, Ecology has decided not to conduct a reasonable potential analysis before issuing the ISGP. Thus, the PCHB ruling could have a profound effect on the legality of the ISGP.

   Question 3.1: How will Ecology respond if the PCHB rules that the Boatyard General Permit is invalid for failure to conduct a reasonable potential analysis, when Ecology has also failed to conduct such an analysis for the ISGP?

4. PSA is gravely concerned that the benchmarks for certain parameters, including copper and lead, are far too high to protect water quality and aquatic species. In addition to concerns raised by the National Marine Fisheries Service about adverse impacts to salmonids from extremely low concentrations of copper, Herrera Environmental Consultants advised drastically reducing the benchmarks for these and other parameters. Ecology seems to have ignored these recommendations. More detailed comments and questions on this topic are included in the section on Condition S5, below.

5. In general, PSA appreciates the reorganization, streamlining, and simplification of permit language. We hope this will increase compliance.

Specific Comments

S1. Permit Coverage

6. Condition **S1.C.2.** provides that facilities that discharge "stormwater only to a municipal combined sewer or sanitary sewer. Discharge of stormwater to sanitary or combined sewers shall only occur as authorized by the municipal authority responsible for that sewer." PSA is concerned that this condition provides a loophole for facilities that discharge to municipal combined sewer systems. Although the permit says that such discharge "shall only occur as authorized," not all municipalities appear to have a process for granting authorization, nor do they appear to be diligent about discovering unauthorized dischargers. For example, it appears that the City of Seattle has no such authorization process.

   Scores of industrial facilities discharge to combined sewer systems in Seattle and King County. In PSA's experience, very few of these facilities have authorization from King County or the City of Seattle to do so. Since these systems regularly overflow, untreated industrial stormwater is in fact being discharged to surface

waters. While this issue must also be addressed in upcoming municipal stormwater permits, Ecology should rewrite Condition S1.C.2. to say: "Industrial facilities that discharge stormwater only to a municipal combined sewer or sanitary sewer must obtain coverage unless the discharge is specifically authorized by the municipal authority and proof of authorization is provided to the Department of Ecology."

S2. How to Apply

7. Condition **S2.A.1.** pertains to facilities currently under permit. PSA supports the requirement that facilities currently under permit submit an NOI to continue coverage under the new permit. PSA believes these facilities should submit with this NOI an up-to-date SWPPP along with attachments. Although the current permit requires Ecology to retain a copy of each facility's SWPPP, PSA's attempts to review these materials have been frustrated by the fact that, when available at all, the SWPPPs are years old and lack updates. Given the adaptive management emphasis of the current permit and preliminary draft, there is little value in Ecology maintaining long-outdated SWPPPs. Permit reissuance and renewal is a logical time to require submission of updated SWPPPs.

8. Condition **S2.A.3.c.i** allows new industrial facilities to apply for coverage only 60 days prior to the commencement of stormwater discharge from the facility. Because new facilities should be required to plan for stormwater requirements early in their inception, and because interested persons should have the opportunity to object and gain meaningful review of the application by the PCHB, new facilities should be required to apply for coverage at least 180 days before commencing discharge. This requirement would be consistent with WAC 173-226-200(b), which states that applications for coverage shall be submitted no later than one hundred eighty days prior to commencement of the activity that may result in discharge. Although Ecology may authorize a shorter application period, it does not seem advantageous to do so in this case.

   Question 8.1: Why is Ecology using the shortened 60-day application period?

9. Condition **S2.B.1** requires the permittee to submit its SWPPP along with the application for coverage. PSA strongly supports this provision; only in this way can Ecology and the public meaningfully review the application.

10. Condition **S2.B.2** allows permittees 90 days to implement non-capital BMPs from the date they receive coverage, which is at least 60 days after applying for coverage, per S2.D. This allows permittees *five months* to implement non-capital BMPs, which is far too long. PSA believes permittees should be required to have implemented non-capital BMPs by the time they receive coverage. At a minimum, however, permittees should be required to implement these BMPs within 30 days of receiving coverage. Similarly, Condition **S2B.3.** allows permittees nine months to implement BMPs requiring capital investment. This timeframe is also too long and should be reduced to six months.

11. Condition **S2.D.1** provides for automatic coverage not sooner than 61 days following application. PSA supports this extended timeframe, which allows for more

substantive evaluation of the application than the current permit's 31-day automatic coverage.

12. Condition **S2.E** requires permittees who discharge to a storm sewer operated by Phase I and II municipalities to send a copy of their application to the appropriate entity. PSA feels strongly that even those municipalities not yet covered by the Phase II rule should have the opportunity to implement effective, comprehensive stormwater management. Accordingly, we believe all permittees should be required to send a copy of their application to the appropriate municipal entity.

S3. SWPPP

13. PSA believes the permit should include a provision requiring Ecology to review and approve, deny, or conditionally approve each facility's SWPPP. This requirement would ensure that BMPs which are effective and appropriate to each facility are in place.

14. PSA appreciates Condition **S3.A.2.a-c**'s inclusion of clear objectives that each SWPPP must meet.

15. Condition **S3.A.3.b** states that new facilities shall apply the minimum technical requirements and BMPs as found in the most recent published SMWW or "equilvalent." Similar language appears in Condition **S3.B.3.e.ii.2**, **S3.B.3.3.iii.3**, and S3.B.3.e.iv.3.

    Question 15.1: Please indicate how Ecology will determine what is "equivalent" to the applicable SWMM, and whether the public will have the opportunity to comment/challenge such a determination.

16. Condition **S3.A.3** indicates that existing facilities that do not undergo new development or redevelopment need not apply the minimum requirements of the most current SWMM. PSA is concerned that this provision will allow existing facilities to ignore important advancements in stormwater management, and fails to ensure facilities are complying with AKART.

    Question 16.1: How does the provision excusing existing facilities from implementing the most current SWMM satisfy the AKART requirement?

17. Including provisions concerning the availability of the SWPPP (Condition **S3.4**.) along with the rest of the SWPPP provisions is an improvement over the existing permit's organization.

18. Condition **S3.A.4.c** provides that Ecology may request "a current copy of, or update to, the SWPPP." This provision should clarify that Ecology may request all attachments, inspection reports, log books, etc., when requesting a current copy or update of the SWPPP. Similarly, **S3.A.4.e** should indicate that the Permittee shall provide the public access to all SWPPP attachments, inspection reports, log books, etc., upon request.

19. PSA supports Condition **S3.A.4.e.i**, which requires Permittees to fulfill public requests for copies of the SWPPP within 14 days (the same time period as for

Ecology requests). This closes a gap in the current permit that encourages the public to make PDA requests to Ecology for these materials, rather than requesting them directly from the facility, and should save Ecology resources.

20. PSA suggests that Condition **S3.A.4.e.ii** also allow Permittees the option of providing the materials requested by the public to the appropriate regional Ecology office. This option would have the dual benefits of fulfilling the public request and providing a current version of the SWPPP to Ecology.

21. Condition **S3.A.4.3.ii.3** provides that "Disputes on SWPPP material released shall be subject to the Dispute Resolution Process described in the fact sheet *or such other applicable course of appeal as pertain to the information under consideration."* This language is confusing, and it is not apparent where the dispute resolution process is described in the fact sheet.

    Question 21.1: Where in the fact sheet is the dispute resolution process described?

    Question 21.2: What does "such other applicable course of appeal as pertain to the information under consideration" mean? The language makes no sense.

22. In Condition **S3.A.5.a**, there are two "ii" sections; the last one should be "iii."

23. Condition **A3.A5.b** provides that an existing facility need not revise its SWPPP solely because a SWMM has been revised. PSA is concerned that this approach does not satisfy AKART requirements. See Comment 16 and Question 16.1.

24. Condition **S3.A.9** provides that Ecology may notify the Permittee when the SWPPP is inadequate or fails to meet the minimum requirements. A provision requiring Ecology's review and approval of SWPPPs (see Comment 13) would make this section more effective.

25. Condition **S3.A.9.c** provides that Ecology may require additional BMPs where the Permittee exceeds benchmark values. PSA believes feedback loops like this are important, especially in the absence of numeric effluent limitations. PSA also supports this provision, which appears to give Ecology the flexibility to take effective action before the Permittee reaches the later levels of S8 Corrective Action.

    Question 25.1: Please clarify whether S3.A.9.c action is in addition to S8 Corrective Actions?

    Question 25.2: If S3.A.9.c action is in addition to S8 Corrective Actions, under what circumstances will Ecology take this action?

26. Condition **S3.B** is much easier to read and understand than in the current permit – a great improvement.

27. Condition **S3.B.1** contains site map requirements. PSA believes the organization of this section is an improvement, and especially appreciates that the site maps will include identification of sampling locations.

28. Condition **S3.B.2.iv** directs permittees include in it facility assessment information on seasonal variations, including peaks in production and changes in work based on season or weather. One benefit of having Ecology review/approve SWPPPs (see

Comment 13) would be to determine whether sampling should occur at specific times of the year based upon these seasonal variations.

29. Condition **S3.B.3.e.ii.3** indicates that permittees may select equivalent BMPs that result in equal or better quality of stormwater discharge. This section should say that equivalent BMPs may be selected that result in equal or better quality of stormwater discharge, *provided that* the permittee documents the technical basis for the equivalent BMPs.

30. Condition **S3.B.3.e.iii.2** provides that the permittee must, at a minimum, include a narrative describing how it determined "that treatment BMPs are required." The current permit requires the SWPPP to include, at a minimum, a narrative describing how the Permittee determined that treatment BMPs are *or are not* required. Ecology should include the same here, or otherwise clarify that Permittees must explain how they determined that treatment BMPs are not required, if that is the case. *See S3.B.3.e.iv.3.*

31. Condition **S3.B.3.e.iii.4** provides that Ecology must approve all treatment BMPs that include the addition of chemicals. PSA appreciates this common-sense addition.

32. Condition **S3.B.3.e.iv.3** introduces some confusion about when to include the technical basis for alternative BMPs. According to S3.A.3.d. and S3.A.3, only those Permittees choosing to use approved, listed SWMMs are excused from the requirement to provide the technical basis for their chosen BMPs. Since at this time, Ecology has not identified "other Ecology-approved technical guidance documents," those choosing to use these, or any other document, rather the approved SWMMs should be required to include the technical basis for their chosen BMPs.

33. It appears that Condition **S3.B.4** should be "S3.B.3.v" as another type of BMP that is addressed under S3.B.3.e., which describes all other types of BMPs, instead of S3.B.4. If that is so, this section and its subsections should be renumbered accordingly.

    Question 33.1: Please explain why this section doesn't include a provision like S3.B.3.e.iv.3. requiring the permittee to describe the technical basis for alternative BMP selection?

34. Given the comment above, it seems Condition **S3.B.5.** should be numbered S3.B.4. Also, PSA believes this detailed direction about sampling plans is a helpful improvement.

S4. Sampling

35. In general, PSA believes that eliminating the "qualifying storm event" criteria should increase compliance with sampling requirements, which is a desirable result.

36. Condition **S5.B.1.a** requires only four samples per year. PSA is concerned that requiring so few samples fails to provide a statistically rigorous monitoring protocol by which Ecology can make informed changes to the program that will promote protection of water quality. PSA believes permittees should be required to sample once each month during the rainy season. Additionally, PSA believes the rainy

which should be defined as *September 1* – June 30. Our review of DMRs indicates that the heaviest concentrations of stormwater contaminants occur during August and September storms. By excluding September from the definition of rainy season, Ecology will lose valuable data concerning seasonal first flush.

In addition, permittees should be required to sample *at least* one storm event during the dry season. This is because, as the National Marine Fisheries Service points out in its comments on the EPA's proposed Multi-Sector General Permit, "concentrations of several parameters were higher in dry weather discharges than wet weather" and "dissolved forms [of metals] were higher in dry weather discharges." NMFS Letter at p.10 (attached for your reference). By eliminating all sampling during dry weather, Ecology is ignoring critical information.

Question 36.1: Please explain why Ecology is requiring only four samples per year, and how this will ensure Ecology will acquire sufficient data to set water quality-based effluent limitations in the next cycle.

Question 36.2: In Western Washington, we frequently begin to experience heavy rains in September. Why does Ecology define the rainy season to exclude September?

Question 36.3: Given that storms following extended dry periods typically contain higher concentrations of several parameters, including metals, why does the draft eliminate the requirement to sample dry weather discharges?

37. Condition **S4.B.1.d** provides that "the Permittee shall not sample more frequently than two weeks from the same location." First, this wording is somewhat unclear. PSA suggests that, if the provision is retained, it should be reworded as follows: "the Permittee shall not take more than one sample from the same location within any two week period." Second, this provision would allow a permittee to take all required samples within about two months. To ensure that samples are representative of conditions throughout the season, the draft should not allow samples to be taken more frequently than every *four* weeks from the same location.

38. Condition **S4.B.1.f** provides that permittees are not required to sample outside of "regular business hours," a term that is generally defined in the permit. It has been PSA's experience that many facilities operate multiple shifts, having 24/7 business hours, yet claim on DMRs that there was no discharge during regular business hours. PSA suggests that facilities be required to identify their "regular business hours" in their applications and SWPPPs.

39. Condition **S4.B** should also include general language requiring that samples must be representative of discharge.

40. PSA is concerned about suspending sampling requirements based on consistent attainment of benchmark values, as allowed by Condition **S4.C.2**. First, attainment of benchmarks does not necessarily establish that a facility is complying with water quality standards, as required by Condition **S6.A.1**. Sampling should continue despite consistent attainment to ensure that the facility is not causing or contributing to a violation of water quality standards. Second, Ecology should gather as much information as possible during this permit cycle to enable it to conduct a Reasonable

Potential Analysis and set numeric effluent limitations. By excusing some facilities from sampling, Ecology risks not having sufficient information to make meaningful improvements in the next permit cycle.

41. PSA is concerned that suspending sampling requirements on the basis of "extreme hardship," as provided by Condition **S4.C.4**, represents a permit modification without the proper process.

    Question 41.1: How frequently have "extreme hardship fee reductions" been requested and granted under the existing ISGP?

42. The draft fact sheet indicates that one reason Ecology declined to establish water quality-based effluent limitations in this permit is because it lacked information about the hardness of the discharge/receiving water. In order to be able to set effluent limitations in the next cycle, it is imperative that Ecology gather this data during this cycle. The draft should therefore include a requirement to sample receiving water for hardness.

    Question 42.1: Please explain why this draft does not provide for collection of data, including the hardness of the receiving water, which will enable Ecology to set water quality-based effluent limitations in the next permit.

    Question 42.2: If the permit does not require permittees to sample receiving water for hardness, how will Ecology collect this information?

S5. Benchmarks, Action Levels, and Discharge Limitations

43. PSA appreciates the draft's inclusion of copper as a core parameter for which all facilities must sample. However, the benchmarks in Condition **S5.A** are far too high.

    First, the permit establishes the copper benchmark at 63.5 ug/L, with an action level of 149 ug/L. This is unacceptable.

    As NMFS explains in its comments on EPA's draft MSGP, "appreciable adverse effects to salmonids may be expected around *5 ug/L or less*." NMFS Letter at p. 11 (emphasis added). NMFS explains that copper concentrations that low have been documented to cause olfactory inhibition and antipredator behavior in juvenile coho salmon. NMFS Letter at p.13. "At 10 ug/L, responsiveness was reduced by 67 % within 30 minutes, an exposure time that is less than typical discharge times for stormwater outfalls." NMFS Letter at p.13. Studies have also documented that copper exposures of over four hours cause cell death of olfactory receptor neurons in several species, including Chinook salmon. And a one hour exposure at 13 ug/L for 100 mg/L hardness resulted in more than 50% loss of sensory capacity among coho salmon in freshwater habitats. NMFS Letter at p. 13.

    Based on this data, NMFS concluded that the draft MSGP's copper benchmark of 14 ug/L would have "more than minor detrimental effects (lethal and sublethal) on all age classes and life history forms of salmon and their prey base in the permit area." Ecology's draft ISGP proposes a copper benchmark *more than four times greater* than the MSGP proposal!

PSA urges Ecology to dramatically lower the copper benchmark and action level to those that would actually ensure compliance with water quality standards and protect the health of salmonids and their prey base.

Second, PSA is also gravely concerned that the lead benchmarks and action levels are far too high, at 81.6 ug/L and 159 ug/L, respectively. In addition to posing their own set of impacts to fish health and water quality, NMFS's comments on the MSGP indicate that mixtures of toxicants including metals likely have adverse effects that are greater than the effects from exposure to individual toxicants. See NMFS Letter, pp. 14-15. PSA urges Ecology to lower lead benchmarks and action levels.

Third, PSA is bewildered that Ecology has totally ignored its own consultant's recommendations concerning benchmarks. Herrera Environmental Consultants advised reducing the benchmarks and action levels for most parameters, including turbidity, copper, lead, BOD, ammonia nitrogen, nitrite and nitrate nitrogen, oil and grease, and total phosphorous. In many cases, the recommendations were to reduce these levels by a third or more! These recommendations were based, in part, on Herrera's analysis that these levels were attainable by a substantial proportion of permittees, which makes Ecology's failure to incorporate the recommendations all the more puzzling.

Question 43.1: Given NMFS's comments and supporting data, how can Ecology justify such an outrageously high copper benchmark?

Question 43.2: How does Ecology justify ignoring its own consultant's recommendations to lower most benchmarks and action levels?

44. Table 4 in Condition **S5.C.1** appears to be incomplete: there are no footnotes for the symbols "b" and "c."

45. Condition **S5.D.3.a** refers to "the following." It is unclear to what this refers. Does this refer to the requirements set forth in S5.D.3.c.i.-vi? If so, this condition would read more clearly if S5.D.3.b. were made S5.D.3.a., and vice versa, and if the requirements in S5.D.3.c.i-vi were listed under S5.D.3.b. (currently S5.D.3.a.).

S6. Discharges to 303(d)-Listed or TMDL Waters

46. Condition **S6.A.1** merely states the law and does not provide a useful or enforceable condition. Ecology should use the same language here as in Condition S10.A., which provides that "Discharges shall not cause or contribute to a violation of Surface Water Quality Standards …. Discharges that are not in compliance with these standards are not authorized." Additionally, Condition S10.D, which provides that Ecology will assess compliance at the point of discharge from the site, is useful language that should be included in S6.A.

47. Condition **S6.G.6** provides, "Where a TMDL for a parameter in the Permittee's discharge specifically precludes or prohibits discharges from industrial stormwater, the operator is not eligible for coverage under this permit." This provision should be moved to S1. Permit Coverage, and it should be clear that permittees/applicants have the duty to apply for individual permits under such circumstances. As written, it

seems that Ecology would have to affirmatively investigate and take action to terminate coverage for these facilities.

S7. Inspections

48. Condition **S7.A** requires permittees to conduct monthly visual inspections from October through June and also to conduct visual inspections of the site each time a stormwater discharge is sampled. Condition **S7.C** requires one dry season inspection each year. PSA appreciates this improvement to the current quarterly visual monitoring requirements during the wet season; however, we believe that monthly inspections should also occur during the dry season to ensure that BMPs are properly implemented and maintained.

49. PSA supports Condition **S7.B**, which establishes required inspection components.

50. Condition **S7.C.4.b** allows permittees 30 days to eliminate an illicit discharge discovered during a dry season inspection. In some cases, illicit discharges may present serious problems for water quality, and 30 days is too long to await a response. PSA suggests this provision be rewritten to allow Ecology, upon the notification required in **S7.C.4.c**, to require the permittee to eliminate the illicit discharge immediately or at least within a shorter timeframe.

51. Condition **S7.D.1** directs permittees to attach inspection records to their SWPPPs. PSA supports this requirement, which ensures that inspection reports are included when permittees produce their SWPPPs in response to Ecology or public request.

S8. Corrective Actions

52. In general, PSA appreciates that the draft increases accountability by requiring that permittees submit certain reports for Ecology's approval and by requiring the permittees to implement additional BMPs and take other necessary actions within definite timeframes. However, PSA is concerned that the end point of the corrective actions is, evidently, attainment of benchmark levels, rather than compliance with water quality standards. Moreover, the draft does not explicitly state that permittees *must* attain benchmarks, suggesting an endless feedback loop with no definite end point.

    As noted in previous comments, attainment of benchmarks does not necessarily mean that a facility is not causing or contributing to a violation of water quality standards. Where corrective actions mandate capital improvements, these should be intended to achieve compliance with water quality standards, not simply bring excessive discharges within the sometimes excessive benchmark levels.

53. PSA is concerned that the permit fails to address those facilities that have been exceeding benchmarks and action levels during the current permit when establishing this set of corrective actions. By stating that the new system of corrective actions applies "after September 30, 2007," the permit appears to ignore the benchmark exceedances that have occurred during the current permit, essentially allowing permittees to reset their compliance records.

Question 53.1: Please explain whether and how the draft addresses repeated exceedances of benchmarks during the current permit.

54. Condition **S8.A.1** allows permittees up to two weeks to conduct an inspection of industrial areas after receiving sampling results above benchmarks. Elevated samples may indicate a serious problem, so this preliminary inspection step should be required immediately upon receiving the elevated sampling results.

55. Condition **S8.A.1.c** directs permittees to "determine which operational source control BMPs … have not been (i) implemented, (ii) properly maintained." This provision assumes permittees will not comply with their SWPPPs, and may in fact discourage compliance until benchmarks are exceeded. Ecology should rewrite the provision to direct permittees to "determine *whether and/or* which operational source control BMPs have not been (i) *properly* implemented, (ii) properly maintained."

56. Condition **S8.A.2** gives permittees up to 30 days to implement the operational BMPs that had not been implemented as required by their SWPPP, as well as any additional BMPs and sampling determined to be necessary. This timeframe seems too lengthy in general, but at a minimum, permittees must be required to implement the BMPs identified in their SWPPPs immediately upon discovering the oversight. Otherwise the permit unacceptably excuses noncompliance for six weeks (two weeks for inspection plus 30 days to implement BMPs) following receipt of sample results above benchmarks.

57. Conditions **S8.A.3**, **S8.B.5**, **S8.C.4**, and **S8.D.2** indicate that Ecology will provide report forms for permittee use. PSA hopes this will promote comprehensive and uniform responses.

58. Condition **S8.A.4** directs the permittee to place the original Level One report in the SWPPP. PSA supports this requirement, which ensures that reports are included when permittees produce their SWPPPs in response to an Ecology or public request. PSA also supports this requirement as to Level Two (S8.B.6), Level Three (S8.C.5), and Level Four (S8.D.3) reports.

59. Condition **S8.A.5** does not require Level One reports to be submitted to Ecology. To ensure compliance, all reports should be submitted to Ecology and made available to the public online through Ecology's website.

    Additionally, Condition **S8.A.5** directs the permittee to include with the next DMR a brief summary of the report *or* a certification that the Level One report has been completed and placed in the SWPPP. Unless the Level One reports are made available online (see previous comments), PSA believes it is crucial that the DMR include *both* a summary and certification.

    Question 59.1: Why doesn't the draft require Level One reports to be submitted to Ecology?

60. Condition **S8.B** directs the permittee to implement necessary additional operational source control BMPs within 45 days of starting a Level Two action, and to implement necessary capital BMPs within six months of starting a Level Two action.

PSA supports these timelines, which ensure that necessary improvements are made quickly and that Level Three responses – which are triggered in part when 2 samples exceed action levels following implementation of Level 2 BMPs -- are also taken in a timely manner when necessary.

61. Condition **S8.C** refers to samples taken after "December 31, 2004." PSA hopes this date is an intentional attempt to address those facilities that have been exceeding benchmarks during the current permit (See Comment 53 and Question 53.1), but is concerned that it is instead merely a relic of the previous permit language.

    Question 61.1: Is "December 31, 2004" the right date in this section?

62. Conditions **S8.C.2 and 3** direct the permittee to investigate all available capital, operational source control, and treatment BMPs to reduce contaminant levels to or below benchmarks. As mentioned above, PSA believes the goal of capital and other BMPs should be compliance with water quality standards, not just meetin benchmarks. Nevertheless, PSA believes it is appropriate to require treatment at this stage and supports that provision.

63. Condition **S8.C.6** allows permittees six months to submit the Level Three report to Ecology for its approval. First, PSA strongly supports the requirement that Ecology review and approve the report, and believes this will help ensure that all appropriate and necessary actions are taken. However, six months to produce the report seems excessive. PSA suggests this report be due to Ecology within three months.

64. Condition **S8.D** describes the Level Four response, which is triggered only after the permittee repeatedly exceeds action levels despite implementing various BMPs. Under those circumstances, PSA questions whether it is appropriate for the facility to remain covered in a general permit. We suggest that coverage under the general permit be terminated at the point that the Level Four response is triggered, and that the facility be required to obtain an individual permit instead.

    However, if these facilities remain within the general permit, PSA definitely supports the Level Four requirement to prepare an engineering report including an AKART analysis and water quality analysis. The draft is unclear about whether and when the engineering report must be submitted to Ecology. The permit should require that the engineering report be submitted together with the Level Four report form.

65. Condition **S8.D.4** allows permittees six months to submit their Level Four reports to Ecology. Again, PSA strongly supports the requirement that Ecology review and approve the report, and believes this will help ensure that all appropriate and necessary actions are taken. This timeframe seems lengthy, but is perhaps necessary to allow time for completion of the engineering report. PSA suggests Ecology require monthly progress reports to ensure that the process stays on track. These reports should also be made available online through Ecology's website.

S9. Reporting and Recordkeeping

66. Condition **S9.A.3** provides that permittees must submit sampling results within 45 days of the end of the reporting period. Under the current permit, DMRs must be

submitted by the 15th day of the month following the reporting period. This requirement should be retained.

Question 66.1: What is the justification for extending the time for submitting this information?

67. Condition **S9.A.5** states that neither sampling nor a DMR is required for the months of July, August, and September. As indicated above, PSA is concerned that eliminating sampling events during these months will deprive Ecology of valuable information concerning the discharges that are likely to have the greatest concentrations of contaminants, including the seasonal first flush which sometimes occurs in September. PSA urges Ecology to require at least one sampling event during this dry season.

68. Condition **S9.A.8** directs permittees to submit a DMR whether or not the facility has discharged stormwater from the site, and to mark the "no sample obtained" check box if there was no discharge. PSA strongly urges Ecology to require that whenever that box is marked, the permittee must explain the circumstances preventing sampling. To prevent facilities from improperly avoiding the sampling requirement, Ecology should also include a provision making failure to sample a permit violation unless the permittee can document that there had been no rain and/or no discharge during the reporting period.

Thank you for considering Puget Soundkeeper Alliance's comments on the preliminary draft of the Industrial Stormwater General Permit. We look forward to your response.

Sincerely,

(signed)

Jennifer Joseph
Soundkeeper Assistant